

WATER COUNCIL MEETING

Dept. of Environmental Services
6 Hazen Dr., Concord, N.H.

August 13, 2003
9:00 a.m.

Members present: Councilors Bradley; Bridges, Butler; Cowan; Densberger; DiMarzio; Funk; Kibbey; Patenaude, Varotsis; and Office of State Planning designee, Ben Frost.

Members absent: Councilor Flynn or his designee, David Barrett; Councilor Vailas or his designee, Brook Dupee; Councilor McLeod or his designee, Johanna Lyons; and Councilor Bartlett or his designee, Randy Curtis.

Vacancies: Appointee representing agricultural interests.

Chairman Bridges opened the meeting at approximately 9:00 a.m.

- (1) **Approval of Minutes of June 11, 2003 Meeting**
A motion was made by Councilor Varotsis to accept the minutes of the June 11, 2003 meeting. Councilor Bradley seconded the motion and it was unanimously voted.

- (2) **Approval of Drinking Water Filtration Grant**
Richard Skarinka, P.E., of the Water Supply Engineering Bureau, requested approval of a drinking water filtration grant for the Town of Epping.

A motion was made by Councilor Bradley to approve the request and to recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Kibbey seconded the motion and it was unanimously voted.

WHEREAS, The following water system has applied to the Department of Environmental Services under the provisions of RSA 486-A for a grant in the amount listed to aid in defraying the costs resulting from compliance with the Surface Water Treatment Rule, as defined in said Chapter:

<u>Public Water System</u>	<u>Grant #</u>	<u>Amount</u>
Town of Epping	04-0761010	\$128,677.25

WHEREAS, The Department of Environmental Services has examined said application as to the eligibility of the construction costs for state contributions; and

WHEREAS, The Water Council finds that said project is intended to protect public health as defined in RSA 485-A;

NOW THEREFORE, The Water Council finds that all the provisions of RSA 486-A have been met by said applicant and respectfully recommends that the Governor and Executive Council approve said grant and authorize payments thereof through the Department of Environmental Services, as provided for in said Chapter.

(3) **Appeals Update**

Michael Sclafani, Appeals Clerk, distributed the following documents and presented an update on pending appeals:

- Docket No. 02-14 WC, Appeal of Randall Parker, Assented-to Request to Stay Motion for Reconsideration of Decision & Order dated 2/13/03
- Draft Env-WC 200, Water Council Procedural Rules.

- **Docket No. 01-13 WC, Appeal of Lake Ashuelot Estates Association**

On June 4, 2003 a motion for rehearing was filed by Don Damm on behalf of Lake Ashuelot Estates. On June 10, 2003 an objection to the motion for rehearing was filed by Attorney Helms on behalf of DES. A letter from Ashuelot Pond Association in support of the council's decision also was filed. The motion for rehearing was tabled at the June 11 meeting to give the Councilors an opportunity to consider the arguments presented in the motion. After discussion, the following action was taken:

A motion was made by Councilor DiMarzio to deny Lake Ashuelot Estates' motion for rehearing. Councilor Patenaude seconded the motion. The motion was carried with nine affirmative votes and one abstention.

- **Docket No. 01-20 WC, Appeal of John Dixon, Sunapee**

DES filed with the Supreme Court a Notice of Appeal of the Council's decision. The Supreme Court issued a notice of receipt on July 3, 2003. There has been no indication whether the appeal will be accepted.

- **Docket No. 02-14 WC, Appeal of Randall Parker**

A settlement agreement has not been finalized in this appeal. Attorney Young, on behalf of Randall and Caryl Parker, filed an assented-to request to extend the stay on the pending Motion for Reconsideration until the Council's regularly-scheduled September meeting, at which point Ms. Young expects that the settlement will be finalized and the appeal withdrawn.

A motion was made by Councilor Varotsis to grant the assented-to request to extend the stay of the Motion for Reconsideration until the September Council meeting. Councilor Butler seconded the motion and it was unanimously voted.

- **NEW APPEAL – Docket No. 03-09 WC, Appeal of Town of Chester Conservation Commission**

A notice of appeal of Site Specific Permit WPS-6515 was filed on July 24, 2003. A notice of receipt was sent by the Appeals Clerk to the Town of Chester on July 25, 2003. Attorney Dean Eggert filed an appearance on behalf of the Town of Chester Conservation Commission on August 4, 2003 and Attorney Mark Harbaugh filed an appearance on behalf of DES on August 6, 2003. The appeal appears to be in conformance with the rules and was timely filed.

Councilor Varotsis made a motion to accept the appeal of the Town of Chester Conservation Commission. Councilor Patenaude second the motion and it was unanimously voted.

A pre-hearing conference will be scheduled and the appeal will be set for hearing at the Council's regularly-scheduled meeting in September 2003.

(4) Discussion of Status of Proposed Septage Rules and Municipal Compliance

John Bush, P.E., Wastewater Engineering Bureau Administrator, addressed questions raised at past meetings with regard to RSA 486:13, a statute which was enacted in 1977 (RSA 149-B:11 at that time). When the statute was recodified in 1989, an effective date was added which applied the law to treatment plants built after 1990. Only two plants have been built after 1990 and they are in compliance with the statute. Plants built prior to 1990 are required to provide a septage facility for treatment of septage generated within the local community. There are treatment plants which are under-utilized but the statute does not require plants to take septage from outside the community. This decision rests with each facility's treatment plant operator.

Mr. Bush advised that Pat Hannon, Septage Coordinator for the Wastewater Engineering Bureau, has been working with the towns over the past year to bring them into compliance with RSA 485-A:5-b. This statute states that each municipality shall either provide, or assure access to, a DES approved septage facility for its residents for a minimum 5-year period. Under Ms. Hannon's guidance twenty-six towns have come into compliance with this statute over the past year.

Another bill passed last year provides an additional incentive to communities to receive septage from other municipalities through state aid grants of up to 50% of the cost to upgrade an existing facility or site a new facility, although these grants may be in jeopardy due to anticipated budget constraints. Other potential incentives have been discussed by the legislature. One such bill introduced this year, which is currently in committee, specifies that DES will not be allowed to approve individual septic systems for towns that are not in compliance with RSA 485-A:5-b.

Mr. Bush explained that if a municipality does not have a written agreement with a facility to accept its septage, it will have no recourse in the event that the facility decides at some point in the future to no longer accept its septage. Currently a high percentage of septage generated in New Hampshire goes to Massachusetts. DES, in conjunction with incentives provided by the legislature, is seeking to ensure adequate facilities to accommodate all of New Hampshire communities over the next several years.

A septage task force was formed four years ago and has been very active. The task force has played a key part in the legislation that was passed last year to provide an incentive to the towns to provide additional treatment capacity. Legislators and representatives from DES and the task force have met recently with representatives from private septage treatment facilities in other states to explore the possibility of regional treatment facilities sited in key localities.

Councilor Kibbey commented that investors are hesitant to build private plants in New Hampshire because the laws and rules do not extend long-term commitments which investors rely upon to recoup their investment.

Councilor Kibbey requested clarification of DES's policy of reviewing costs imposed on septage haulers in New Hampshire which are substantially higher than in surrounding states. Mr. Bush explained that DES does a review of septage costs when a treatment plant is built but not on an annual basis.

(5) Other Business

- Councilor Butler expressed appreciation for the excellent seminar on inspections and compliance sponsored by the Wastewater Engineering Bureau approximately two weeks ago. It was informative and well-attended by plant operators.
- Russ Nylander, P.E., Chief Engineer, advised that summaries of 2003 legislation will be distributed to the Council when available.
- The proposed revised Council rules were distributed and will be discussed at the next Council meeting.
- Councilor Bridges expressed his thanks and appreciation on behalf of the Council for David Kibbey's many years of dedicated volunteer service on the Water Council.

(6) Next Meeting

The next meeting will be September 10, 2003.

(7) Adjournment

The meeting adjourned at approximately 10:15 a.m.